

Note: Change Made to this Document

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HAMMAN-MILLER-BEAUCHAMP-
DEEBLE INC,

Plaintiff,

v.

LIBERTY MUTUAL AGENCY
CORPORATION, a Corporation;
LIBERTY MUTUAL AGENCY
UNDERWRITERS., business form
unknown; GENERAL INSURANCE
COMPANY OF AMERICA, business
form unknown; and DOES 1 through 20,
inclusive,

Defendants.

CASE NO. 2:13-CV-7129RGK(VBKx)

~~PROPOSED~~ PROTECTIVE
ORDER GOVERNING
CONFIDENTIAL INFORMATION

After having reviewed the Stipulation of the Parties Regarding Confidentiality of Documents and Things, and good cause appearing, this Court orders as follows:

1. Either party in the lawsuit styled *Hamman-Miller- Beauchamp- Deeble Inc. v. Liberty Mutual Agency Corporation; et al.*, United States District Court Case No. 2:13-CV-7129RGK (VBKx) (the “Case”), may, by written notice, or by a statement on the record at a deposition, designate any material that the party in good faith believes to be confidential, privileged, private, commercial,

1 financial information, or “trade secrets” as defined in California Civil Code
2 section 3426.1 and incorporated herein by this reference, not previously made
3 available to the public or the receiving party, as “Confidential” under the terms of
4 this Protective Order.

5 2. The provisions of this Protective Order shall apply with the same
6 force and effect to any non-party in this Case who provides testimony, documents,
7 or information in such discovery proceedings and to any party in the Case who will
8 receive such testimony, documents or information in the Case. Such non-parties
9 may intervene in this Case to enforce the provisions of this Protective Order as if
10 they were a party to the Case. References to a “party” or “parties” herein shall also
11 include such non-parties who provide testimony, documents, or information in this
12 Case.

13 3. Documents that contain non-public information may be designated as
14 “Confidential” in the manner described below for materials concerning the
15 producing party’s trade secrets (as that term is defined in California Civil Code
16 section 3426.1) or other proprietary or confidential financial, operational, research
17 and development or commercially sensitive information, information that
18 implicates privacy rights, or information as to which the producing party otherwise
19 has a business or legal need for confidentiality. The documents which may be
20 designated as “Confidential” contain the following categories of information that
21 the Parties have thus far identified as potentially requiring protection under this
22 Protective Order:

- 23 • confidential or financial information of third parties;
- 24 • trade secret or other proprietary information regarding
- 25 underwriting of the policies;
- 26 • attorney fee billing invoices;
- 27 • claims handling manuals, procedures, guides and training
- 28 materials;

- underwriting manuals, procedures, guides and training materials;
- other information of non-parties, such as claim information or other personal, confidential information;
- attorney-client or work product information;
- reinsurance information;
- reserve information.

4. The foregoing categories of information may be found in any of the following types of documents, all of which may be designated as “Confidential” under this Protective Order, as appropriate:

- (a) exhibits, answers to interrogatories, responses to requests for admissions and deposition transcriptions and all original written, recorded, graphic or electronic matters (and all identical and non-identical copies thereof);
- (b) any copies, notes, abstracts or summaries of such information, and the information itself; or
- (c) any pleading, affidavit, declaration, brief, motion, transcript or other writing containing such information.

5. Notwithstanding anything to the contrary in this Order, a producing party may designate as “Confidential” any information or documents previously transmitted or disclosed pursuant to a written agreement or understanding regarding the confidentiality of such information or documents, or which is/are protected as confidential or privileged by statute, rule, or regulation. Further, notwithstanding anything to the contrary in this Order, any and all billing invoices or related documents reflecting services performed by or on behalf of counsel may be designated as “Confidential,” regardless of when or under what circumstances the documents were disclosed.

1 6. Only non-public documents and documents not previously in the
2 possession of the receiving party may be designated as “Confidential.”
3 Accordingly, “Confidential” materials shall not include any documents concerning
4 information that at any time has been: (a) produced, disclosed or made available to
5 the receiving party, the public or otherwise available for public access; or (b)
6 disclosed in connection with any governmental public filing which could not
7 reasonably be assumed to be or have been intended to be kept confidential. Any
8 document concerning information that has not been preserved or maintained in a
9 manner calculated to preserve its confidentiality shall not be designated as
10 “Confidential.”

11 7. Any documents, material or information to be designated
12 “Confidential” pursuant to this Order may be so designated by stamping or
13 otherwise affixing on the documents, material or information the legend
14 “CONFIDENTIAL” (the “required legend”) prior to their production. Documents
15 or things which cannot be reasonably labeled pursuant to this paragraph should be
16 so designated by the Producing Party by informing the receiving party in writing.
17 Confidential information consisting of a multi-page document must contain the
18 required legend on every page designated as Confidential. In the case of a
19 deposition transcript, transcript of a court or other related proceeding, an
20 admission, interrogatory answer, or other discovery response, the required legend
21 shall be stamped or affixed immediately preceding the portion of such matter as is
22 being designated confidential.

23 8. If material originally produced without the required legend is
24 subsequently designated as Confidential by any party, including the party who
25 originally produced the material, the designating party shall provide all parties with
26 a copy of that material bearing the required legend. Upon receipt of the copy of
27 the material bearing the legend, the receiving party shall either: (a) affix the
28

1 required legend to each page of the previously non-legended copies in its
2 possession; or (b) destroy all non-legended copies in its possession.

3 9. The provisions of the Protective Order may be applied retroactively.
4 In the event that any party wishes to designate any protected material previously
5 produced as Confidential, that material shall still be treated as such, provided that
6 any designating party which claims that its confidential information is protected
7 material provides written notice to each non-designating party, as soon as
8 practicable, designating the material as Confidential. Upon receipt of such written
9 notice, each non-designating party shall treat the designated material as
10 Confidential and shall stamp or mark it accordingly.

11 10. Nothing herein shall require defendant to destroy or alter documents,
12 whether in electronic or hardcopy format, in its claim files, underwriting files, or
13 other files or records it maintains and/or is required to maintain in the course of
14 business.

15 11. Any party may, within a reasonable time, object to any other party's
16 designation of information as "Confidential" under this Order as follows: 1) in
17 depositions or court proceedings by stating such objection on the record; 2) in
18 writing served on all parties that specifies the designation objected to and the basis
19 therefore. It shall be the burden of the party designating testimony, documents or
20 information "confidential" under this Order to demonstrate to the Court's
21 satisfaction of the propriety of the party's designation.

22 12. In the event that a party designates all or a portion of a deposition
23 transcript as Confidential after the transcript has been produced to all parties by the
24 reporting service, each party in possession of a copy of the transcript not
25 previously marked as Confidential shall, upon notice of a confidential designation,
26 annex to the deposition a copy of any such notice of designation.

27 13. In the event counsel for the party receiving documents, material, or
28 information designated as "Confidential" (the "receiving party") objects to such

1 designation of any or all of such items, counsel shall within a reasonable time after
2 receipt, advise the party producing the items (the “producing party”) of such
3 objections and the reasons therefore. All of the items shall be treated as
4 “Confidential” pending a resolution of the parties’ dispute. It shall be the burden
5 of the producing party to demonstrate to the Court’s satisfaction the propriety of
6 the “Confidential” designation.

7 14. If any party wishes to use or inquire at any deposition concerning
8 documents, material, or information designated as “Confidential” the portion of the
9 deposition transcript that relates to such documents, material, or information shall
10 be designated and treated as “Confidential” and subject to this Order. Further, any
11 party may designate any additional portion of deposition testimony in this Case
12 “Confidential” no later than fifteen (30) days after receipt of the deposition
13 transcript, subject to the provisions of paragraphs 5 and 6, above.

14 15. Documents or material (including portions of deposition transcripts)
15 designated as “Confidential” or information derived solely therefrom, may only be
16 disclosed or made available by the party receiving such information to “Qualified
17 Persons,” who, in the case of documents, material or information designated as
18 “Confidential” are defined to consist solely of:

- 19 (a) The Court and any trier or finder of fact, such as the members
20 of a jury impaneled in this action (at any trial or oral hearing
21 and in the manner provided by paragraph 15 hereof);
22 (b) Counsel (including “in-house” counsel) for the parties in this
23 Case and the paralegal, clerical (including data entry and IT
24 personnel) and secretarial staff employed by such counsel;
25 (c) Court reporters, videographers or similar personnel;
26 (d) Any party’s witness during the course of that witness’
27 deposition or testimony in court;
28

- 1 (e) Experts and/or advisors consulted by the parties or their counsel
2 in connection with this Case, whether or not retained to testify
3 at trial; provided that prior to any such disclosure counsel for
4 the party making the disclosure shall deliver a copy of this
5 Protective Order to the expert and/or advisor, shall explain its
6 terms to the expert and/or advisor, and shall secure the
7 signature of the expert and/or advisor on a letter in the form
8 attached hereto as Exhibit A;
- 9 (f) Corporate representatives selected by the corporate parties to
10 this litigation;
- 11 (g) Reinsurers and auditors; and
- 12 (h) Any other person as to whom the producing party agrees in
13 writing prior to disclosure.

14 16. Documents and materials designated as “Confidential” and
15 information derived solely therefrom shall be used by the parties and their counsel
16 only for the purposes of preparing for and acting in this Case. Documents and
17 materials designated as “Confidential” and information derived solely therefrom
18 shall not be used by the parties or their counsel except as expressly permitted
19 herein. Moreover, any document containing summary or recitation of any part of
20 the content of a “Confidential” document or of confidential information also shall
21 be deemed to be a “Confidential” document and have the required legend affixed
22 to it, and subject to all of the protections and restrictions in this Protective Order.

23 17. No copies shall be made of any “Confidential” document except as
24 deemed reasonably necessary in this Case. Any and all “Confidential” documents
25 shall be kept in secure, segregated facilities and access to those facilities shall be
26 permitted only to Qualified Persons. Counsel for each party shall take such steps
27 as they reasonably believe are appropriate to advise those persons employed or
28

1 retained in clerical, stenographic or ministerial functions of the restrictions upon
2 dissemination of "Confidential" documents provided by this Protective Order.

3 18. Nothing herein shall impose any restrictions on the use or disclosure
4 by a party or witness of documents or information obtained lawfully by such party
5 or witness independently of the discovery proceedings in this Case, or from a
6 source independent of the producing party, whether or not such documents or
7 information are also obtained from the producing party through discovery in this
8 Case, except as stated in paragraph 4 above.

9 19. Nothing contained herein shall constitute a waiver of or otherwise
10 restrict a party's right to propound discovery or object to discovery of or use of any
11 documents or information in this Case. Nothing contained herein shall constitute a
12 waiver by a receiving party of the right to object to the designation of documents,
13 materials, or information as "Confidential."

14 20. A Party that seeks to file under seal any documents and material
15 designated as "Confidential" must comply with Civil Local Rule 5.3(c) and this
16 Court's Standing Orders. In lieu of this procedure, the designating and filing
17 parties may agree to file a redacted version of the documents or material
18 designated as "Confidential".

19 21. All Court orders will be presumptively available to the public.
20 Therefore, if a party files any evidence, motion or other papers under seal pursuant
21 to this Protective Order, all papers that refer to or rely upon such evidence shall
22 designate the particular aspects that are confidential. By so designating, the parties
23 will enable the Court, in drafting orders, to determine whether there is evidence
24 which the Court should attempt not to disclose. Absent such advance notification,
25 the Court will be free to incorporate all such evidence in its written and oral
26 rulings.

27 22. If any party wishes to use documents and materials designated as
28 "Confidential" at Trial, any such documents and materials that were designated as

1 “Confidential” and/or kept and maintained pursuant to the terms of this Protective
2 Order will become public and will be presumptively available to all members of
3 the public, including the press, unless sufficient cause is shown in advance of trial
4 to proceed otherwise.

5 21. Each non-lawyer given access to documents, material or information
6 designated “Confidential” pursuant to the terms hereof shall be advised that the
7 documents, material, or information are being disclosed pursuant to and subject to
8 the terms of this Protective Order and may not be disclosed other than pursuant to
9 the terms hereof.

10 22. Complying with the terms of this Protective Order shall not:

- 11 (a) operate as an admission by any party that any particular
12 documents, material, or information contain or reflect currently
13 valuable proprietary or commercial information; or
14 (b) prejudice in any way the right of a party at any time:
15 (i) to seek a determination by the Court of whether any
16 particular documents, item of material, or piece of
17 information should be subject to the terms of this
18 Protective Order;
19 (ii) to seek modifications of this Protective Order;
20 (iii) to present a motion to the Court for a separate protective
21 order as to any particular document or information,
22 including restrictions differing from those as specified
23 herein; or
24 (iv) to seek relief on appropriate notice from any provision(s)
25 of this Protective Order, either generally or as to any
26 particular documents, item of material, or piece of
27 information.
28

23. Upon termination of the above-captioned Case (i.e., after final judgment is entered and all appeal periods have expired or appeals been finally decided, or after final resolution of the Case by settlement), or at any time thereafter, the party who produced or designated information or documents “Confidential” may request the destruction, or return to counsel for the producing or designating party, of all documents and/or material designated as “Confidential” and all copies thereof. The receiving party shall make all reasonable efforts to ensure that it has retrieved all material subject to the request and has destroyed or returned (as requested) all such materials, except that outside counsel for each party may maintain in its files pleadings, briefs, and other documents filed with the Court and official deposition transcripts and exhibits, as well as any work-product or attorney-client privileged communications regarding such documents and/or information, and such documentation required to be maintained by corporate guidelines and/or applicable law, provided that all such documents and/or information will otherwise remain subject to the terms of this Protective Order. The prohibitions of this Protective Order which restrict the disclosure and use of “Confidential” materials shall continue to be binding upon a party and the party’s outside counsel to the extent that the party (and/or the party’s outside counsel) retains any such “Confidential” documents or materials and and/or copies thereof. The Court shall retain jurisdiction following the resolution of the Case to enforce the terms of this Protective Order.

24. All documents, material, and information designated as “Confidential” may only be used by the parties to this Case, and Qualified Persons, subject to the rights of any party to raise any other objections to the use of such discovery material.

25. It is the intent of the Parties that production by any Party of any information, including electronically stored information, during discovery in this action shall be without prejudice to claim that such material was inadvertently

1 produced and is protected by the attorney-client privilege or work product doctrine,
2 and no party shall be held to have waived any rights by such inadvertent
3 production. If information produced in discovery is subject to a claim of privilege,
4 the party making the claim shall notify, in writing, the party that received the
5 information of the basis for the claim. Notwithstanding the above, oral notice is
6 sufficient in the event that notice must be delivered at a deposition. Any such
7 notification, whether written or oral, must be given no later than 60 days before
8 trial. After being notified of a claim of privilege, the party that received the
9 information: (a) must promptly sequester, return or destroy the specified
10 information and any copies it has; (b) must not use or disclose the information until
11 the claim is resolved; (c) must take reasonable steps to retrieve the information if
12 the party disclosed it before being notified; and (d) must sequester any documents
13 containing or otherwise describing the specified information until the claim has
14 been resolved. The party that received the information shall have ten (10) calendar
15 days (or some other time period reasonably agreed to by the parties in writing)
16 from receipt of the notification of the inadvertent production to determine in good
17 faith whether to contest such claim and to notify the party making the claim in
18 writing of an objection to the claim of privilege and the grounds for that objection.
19 The party making the claim of privilege will then have ten (10) calendar days (or
20 some other time period reasonably agreed to by the parties in writing) from receipt
21 of the objection notice to submit the specified information to the Court under seal
22 for a determination of the claim and will provide the Court with the grounds for the
23 asserted privilege or protection. In the event the party making the claim fails to
24 submit the specified information, and the grounds for the asserted privilege, to the
25 Court within the time specified herein, the privilege or protection is deemed
26 waived. Upon a determination by the Court that the specified information is
27 protected by the applicable privilege, and if the specified information has been
28 sequestered rather than returned or destroyed, the specified information shall be

1 returned, destroyed or otherwise rendered disabled from further use or rendered
2 inaccessible. To the extent that the party making the claim insists on the return or
3 destruction of the specified information, rather than disabling the information from
4 further use or otherwise rendering it inaccessible, the party making the claim shall
5 bear the costs of the return or destruction of such information.

6 26. This Stipulation shall not in any way prejudice the rights of any party
7 to object to the admissibility at trial of any information produced during discovery
8 in this action.

9 27. The Court is not bound by the terms of this Protective Order.

10 28. This Protective Order may be modified by subsequent Order of the
11 Court, and the parties may seek such modification.

12 29. This Court shall retain jurisdiction over all persons subject to this
13 Protective Order for the purposes of enforcing this Protective Order.

14 30. This Stipulation may be executed in counterparts. Facsimile and
15 electronic signatures have the same force and effect as original signatures.

16 Comply with all Local Rules, including L.R. 79-5 re Filing Under seal

17 **SO ORDERED:**

18 DATED this **14th**, day of **April**, 2014.
19
20

21 /s/

22 Honorable United States Magistrate Judge
23 VICTOR B. KENTON
24
25
26
27
28

EXHIBIT A

LIMITED SPECIAL APPEARANCE AND AGREEMENT
FOR ACCESS TO CONFIDENTIAL DOCUMENTS AND INFORMATION

I hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the Court in the above-captioned Proceeding on the _____ day of _____. I understand the terms of the Court's Order and under oath consent to be bound by the terms of the Court's Order as a condition to being provided access to confidential documents and information furnished by _____. By executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms of the Court's Protective Order.

I hereby declare under the penalty of perjury under the laws of the United States of America that the above statements are true and correct.

Dated: _____

By: _____

Name: _____

Title: _____

Affiliation: _____

Address: _____